IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3520 OF 1991

1. Spaco Carburettors India Ltd.
   a Company incorporated under
   the Companies Act, 1956 and
   having its Registered office
   at 901, Prasad Chambers,
   Opera House, Bombay 400 004

2. Mrs.Meena Jaytinbhai Bhatt
   Indian Inhabitant residing
   at Uatan 10 Rambaug Society
   Makarpura Road,
   Baroda 390 010 .. Petitioners.

V/s.

1. Raj Kumar,
   Dy. Commissioner of Income
   Tax, Special Range 16,
   Bombay having his office at
   Aayakar Bhavan, M.K. Road,
   Bombay - 400 020

2. Union of India .. Respondents.

Mr.P.J. Pardiwala i/b. Mr.R.A.K. Najam & Sani for the petitioners.

Mr.Parag Vyas for the respondents.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 26TH SEPTEMBER, 2005.

ORAL JUDGMENT (Per J.P. Devadhar, J.) :

1. The short point raised in this petition is whether the assessing officer after issuance of notice for regular assessment under Section 143(2) of the Income Tax Act, 1961 was justified in issuing intimation under Section 143(1)(a) of the Income Tax

Act, 1961 ?

2. The assessment year relevant for the present petition is 1989-1990.

3. On December 29, 1989 the petitioner No.1 (hereinafter referred to as 'the assessee') filed its return of income for AY 1989-90 inter alia claiming deduction of Rs.1,01,15,244/- being the expenditure on acquiring technical know-how as revenue expenditure. An intimation under Section 143(1)(a) was issued by the assessing officer on April 16, 1990 accepting the return.

4. The said intimation was rectified by the assessing officer under Section 154 of the Income Tax Act by disallowing the expenditure on technical know-how on the ground that the same is capitalised. Thereupon, the assessee on March 26, 1991 filed revised return seeking reduction under Section 32, 32A and 35AB of the Income Tax Act, 1961 by treating the expenditure incurred on acquisition of technical know-how as acquisition of the plant.

5. On July 5, 1991 the assessing officer issued notice under Section 143(2) of the Income Tax Act calling upon the assessee to attend his office with documents and evidence in support of the claim made

in the revised return. By its reply dated August 1, 1991, the petitioners placed on record their submission in support of their claim made in the revised return.

6. Instead of passing a regular assessment order under Section 143(3) of the Income Tax Act, 1961, the assessing officer issued intimation dated July 29, 1991 under Section 143(1)(a) of the Income Tax, 1961 making adjustments without considering the claim of the assessee. The said intimation dated July 29, 1991 is challenged in the present petition.

7. Mr.Pardiwala, learned counsel appearing for the petitioners submitted that in the light of the decision of the Apex Court in the case of Commissioner of Income Tax V/s. Gujarat Electricity Board [260 ITR 84], it was not open to the assessing officer to issue intimation under Section 143(1)(a) of the Income Tax Act after issuance of the notice for regular assessment under Section 143(3) of the Income Tax Act.

8. The learned counsel appearing for the revenue fairly stated that in view of the aforesaid judgment of the Apex Court, the intimation dated July 29, 1991 issued by the assessing officer under Section 143(1)(a) cannot be sustained.

9. Thus, the issue raised in the petition is squarely concluded by the aforesaid judgment of the Apex Court. Accordingly, the petition succeeds. The impugned intimation dated July 29, 1991 (Exhibit ‘H’ to the petition) is quashed and set aside.

10. Rule is made absolute in terms of prayer clause (a) with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)